

- BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A REVISION TO  
A SUBSTANTIAL DEVELOPMENT PERMIT  
ISSUED BY THE CITY OF SPOKANE TO  
THE CITY OF SPOKANE PARKS AND  
RECREATION DEPARTMENT

RICHARD E. GOODMAN,

Appellant,

v.

CITY OF SPOKANE and CITY OF  
SPOKANE PARKS AND RECREATION  
DEPARTMENT,

Respondents,

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY and  
SLADE GORTON, ATTORNEY GENERAL,

Intervenors.

SHB No. 214

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the request for review of a revised sub-  
stantial development permit issued by the City of Spokane to  
its Parks and Recreation Department, comes to the Shorelines

1 Hearings Board, pursuant to agreement by all parties, on written  
2 briefs in lieu of a formal hearing.

3 During preliminary conferences and in the submission  
4 of written materials, appellant Richard E. Goodman appeared pro  
5 se; James C. Sloane, Assistant Corporation Counsel, represented  
6 the respondent City of Spokane; Robert V. Jensen, Assistant  
7 Attorney General, represented the intervenors, Department of  
8 Ecology and Attorney General.

9 From pleadings filed, exhibits examined, and briefs  
10 reviewed, the Shorelines Hearings Board makes these

11 FINDINGS OF FACT

12 I.

13 On February 18, 1972, EXPO '74, Inc., applied to the  
14 City of Spokane for a substantial development permit for an  
15 "International Exhibition." The project description on the  
16 application incorporated by reference the existing site plan,  
17 the proposed site plan and the EXPO Residual maps. In addition,  
18 the application cited a memorandum regarding "Improvements Remain-  
19 ing After EXPO" as a document which further defined the project.

20 II.

21 On March 28, 1972, a substantial development permit  
22 was granted to EXPO '74 to "construct and develop an Internation-  
23 al Exposition." Conditions of the permit were to be those im-  
24 posed by the City Council as part of a special zoning permit  
25 granted for the EXPO on March 27, 1972. These conditions stated  
26 in part:

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1 "...7. After the Exposition, EXPO '74 shall  
2 expeditiously clear the site of temporary struc-  
3 tures and site improvements satisfactory to the  
4 City Engineer in preparation for use of the  
land as a permanent public park and governmentai-  
cultural center in accordance with the Spokane  
Riverfront Development Plans."

5 III.

6 On March 2, 1976, the Spokane Parks and Recreation  
7 Department requested of the City an amendment to the existing  
8 shoreline development permit which would authorize the construc-  
9 tion of a "temporary parking lot to serve park and existing  
10 YMCA building."

11 The parking lot would cover approximately one-third of one  
12 acre of the fifty-acre riverfront park and would be designed to  
13 accommodate thirty-one cars. The YMCA maintains a social ser-  
14 vice and indoor recreation facility on North Howard Street on  
15 Havermale Island. The proposed agreement between the City of  
16 Spokane and the YMCA with regard to the temporary parking lot  
17 provides that:

18 "...the sole use of the short-term parking  
19 area shall be for visitors to the Central  
20 Riverfront Park and YMCA building and facili-  
21 ties. Provided further, that the YMCA shall  
22 have the right to regulate the use of the  
23 short-term parking area so as to grant pri-  
24 ority of use of said parking area to visitors  
25 to the YMCA building during periods of peak  
26 use of the YMCA facilities." (Exhibit A5(b),  
27 pp. 2, 3)

24 According to the Environmental Checklist prepared on  
25 January 16, 1976 and submitted with the request for revision,  
26 the lot is to be "removed and returned to park use when suffi-

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1 | cient transit service is available to the park and YMCA facil-  
2 | ity."

3 | IV.

4 | On March 11, 1976, a permit amendment was issued  
5 | pursuant to WAC 173-14-064(1) which authorized the construction  
6 | of the parking lot with the following conditions imposed:

7 | "1. The parking lot must be constructed as  
8 | shown on the February 3, 1976 plans.

9 | 2. The parking lot may NOT be hard-surfaced  
10 | in any manner (approval is for a gravel surface  
11 | only).

12 | 3. The parking lot MUST be removed and the  
13 | site returned to its previously approved use as  
14 | shown on the plans within sixty (60) days follow-  
15 | ing the expiration date of this amendment.

16 | 4. This amendment expires on March 8, 1979."

17 | Appellant timely filed his request for review on  
18 | March 23, 1976, alleging that the development for which the  
19 | amended permit was issued was not within the scope and intent  
20 | of the 1972 permit and thus did not comply with WAC 173-14  
21 | -064(1).

22 | V.

23 | WAC 173-14-064, promulgated by the Department of  
24 | Ecology pursuant to RCW 90.58.140(3), became effective on  
25 | January 2, 1976 and provides:

26 | REVISIONS TO SUBSTANTIAL DEVELOPMENT PERMITS.  
27 | When an applicant seeks to revise a substantial  
28 | development permit, local government shall request  
29 | from the applicant detailed plans and text describ-  
30 | ing the proposed changes in the permit.

31 | (1) If local government determines that the  
32 | proposed changes are within the scope and intent  
33 | of the original permit, local government shall  
34 | approve a revision. The revised permit shall be-

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36 | CONCLUSIONS OF LAW AND ORDER -4

1 come effective immediately. The approved revision  
2 along with copies of the revised site plan and  
3 text, should be submitted by certified mail to the  
4 appropriate department of ecology regional office,  
5 the attorney general, and to persons who have pre-  
6 viously notified local government relative to the  
7 original application pursuant to WAC 173-14-070.  
Appeals shall be in accordance with RCW 90.58.180  
and shall be filed within 15 days from date of  
certified mailing. The party seeking review shall  
have the burden of proving the revision granted  
was not within the scope and intent of the original  
permit.

(2) If the proposed changes are not within  
the scope and intent of the original permit, the  
applicant shall apply for a new substantial develop-  
ment permit in the manner provided for herein.

#### VI.

The site of EXPO '74 was the shorelines of the Spokane  
River within the center of the City of Spokane, an area bounded  
generally by Mallon Avenue on the north, Division Street on the  
east, Trent Avenue (Spokane Falls Boulevard) on the south and  
Lincoln Street on the west and including both Havermale and  
Cannon (Crystal) Islands.

As early as 1965, the elimination of cluttered rail-  
road trackage in this area and the development of the riverfront  
as a public preserve and resource was made a part of Spokane's  
comprehensive plan. By 1971 the major railroads had agreed to  
donate their property and structures to the City of Spokane to  
further the City's plan to develop a downtown riverfront park  
and an outdoor recreation area. Preliminary planning of  
Spokane's centennial celebration, ultimately EXPO '74, regarded  
the exposition as an impetus for state and federal funding of  
the costly riverfront development.

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1 Pursuant to Ordinance No. C21325, and a memorandum  
2 opinion with regard thereto, the landlord-tenant relationship  
3 of the City of Spokane and EXPO '74 was reaffirmed. It was  
4 specifically stated that at the conclusion of EXPO '74, "the  
5 site will be operated by the City of Spokane as a public park."<sup>1/</sup>

6 Thus the Board finds that the concept for the develop-  
7 ment of the Central Riverfront Park did predate the concept  
8 of EXPO '74.

9 VII.

10 However, at the time the original permit was issued to  
11 EXPO '74 on March 28, 1972, there existed no detailed plans or  
12 specifications for the Central Riverfront Park. Further, neither  
13 on the face of the original permit nor in any of the documents or  
14 conditions incorporated by reference therein is a parking lot on  
15 the instant site identified or described. Indeed, at the time the  
16 permit was issued, a Government Center Building was contemplated  
17 for the site.

18 VIII.

19 Citing WAC 173-14-060, appellant additionally alleged  
20 that the life of the original permit could not extend beyond  
21 March, 1978, even if an extension were to be granted;<sup>2/</sup>

22 <sup>1/</sup> No. 205246 (Spokane Superior Court, March 22, 1972) p. 5.

23 <sup>2/</sup> (2) If a project for which a permit has been granted pursuant  
24 to the Act has not been completed within five years after the  
25 approval of the permit by local government, the local government  
that granted the permit shall, at the expiration of the five-year  
period, review the permit, and upon a showing of good cause, do  
either of the following:

26 (a) Extend the permit for one year; or

(b) Terminate the permit.

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IX.

Any Conclusion of Law hereinafter stated which may be deemed a Finding of Fact is hereby adopted as such.

From these Findings of Fact the Board comes to these

CONCLUSIONS OF LAW

I.

The construction of the temporary parking lot which is the subject of this appeal would require a substantial development permit if it is not deemed to be a revised permit under WAC 173-14-064(1).

II.

There is no merit in Appellant's contention that, under the facts of this case, the City of Spokane Parks and Recreation Department cannot seek a revision of a permit granted to EXPO '74. The validity of a substantial development permit, or a revision thereto, is not dependent upon an applicant's property interest in the site but upon the nature of the substantial development itself. Permits which are issued and sustained, including conditions imposed thereunder, run with the land for the permissible life of the permit.

III.

The issue before the Shorelines Hearings Board in this matter is a narrow one, i.e., is the project for which the revised permit issued on March 11, 1976 within the scope and intent of the original permit issued on March 18, 1972. The merits of the development, a temporary parking lot, and the consistency of its land-use with the policies and priorities of the Shoreline Management Act are not now before this Board.

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IV.

In determining whether or not a revision was properly issued under WAC 173-14-064(1), the Board gives substantial weight to the interpretation of the regulation articulated by the agency promulgating such regulation, i.e., the Department of Ecology. In a memorandum filed by the Department of Ecology in another matter now before this Board,<sup>3/</sup> the agency contends that:

"...this terminology, (WAC 173-14-064) which authorizes an exemption from the established substantial development permit procedure must be narrowly construed in order to not thwart the basic regulatory scheme of the Act."

V.

The Board concludes that the "intent" of the original permit issued to EXPO '74 in 1972 did include the intent to facilitate the further development of a riverfront park. However, nothing in the record can be found to demonstrate an "intent" to establish a parking lot on the instant site.

VI.

Further, the Board concludes that the "scope" of the original permit must be defined as the specific substantial development or developments described (1) on the face of the permit itself, (2) in those documents specifically incorporated in the permit by reference or, (3) on the site plans which accompanied the original application. This Board has previously held that:

"We are urged to find that the purpose and scope of the permit is to be found in the environmental

<sup>3/</sup> Memorandum of Appellant, SHB 216, DOE v. Island County and Nichols Bros. Boat Building, Inc.

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1 impact statement. We refuse to do so. The  
2 permit itself should describe with particular-  
3 ity and certainty what is being authorized."  
4 SHB 108 and SHB 112, p. 7.4/

5 VII.

6 Utilizing WAC 173-14-064 to authorize construction  
7 which, as to use or location, was clearly not contemplated, let  
8 alone detailed, at the time the original permit was issued would  
9 indeed circumvent the protections afforded by the Shoreline Manage-  
10 ment Act. In particular, if the broad outline of a generally  
11 stated concept alone sufficed to invoke the provisions of WAC 173  
12 -14-064(1), the opportunity for public comment on the merits or  
13 design of a particular development, a hallmark of the Shoreline  
14 Management Act, would be effectively muted.

15 VIII.

16 This Board concludes that Appellant has met the burden  
17 that WAC 173-14-064 places on him of proving that the "revision  
18 granted was not within the scope and intent of the original  
19 permit."

20 IX.

21 Having determined that the permit issued on March 11,  
22 1976, was not within the scope and intent of the original permit,  
23 the expiration date of said permit is no longer at issue.

24 4/ See Also SHB Nos. 103, 137 and 75.

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X.

Any Finding of Fact which may be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board makes and enters this  
ORDER

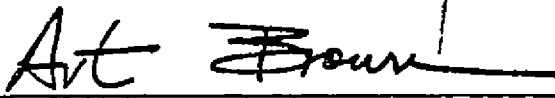
The revised permit, granted by the City of Spokane to its Parks and Recreation Department on March 25, 1976, is vacated.

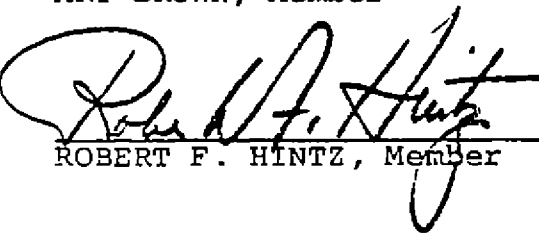
DATED this 14<sup>th</sup> day of July, 1976.

SHORELINES HEARINGS BOARD

  
CHRIS SMITH, Chairman

  
W. A. GISSBERG, Member

  
ART BROWN, Member

  
ROBERT F. HINTZ, Member